Filed 3/28/17 In re C.W. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re C.W., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. C.W., Defendant and Appellant.	A146299 (Contra Costa County Super. Ct. No. J1000532)

Defendant C.W. filed a petition requesting that the juvenile court designate four felony second degree commercial burglary adjudications (Pen. Code, §§ 459, 460, subd. (b))[1] as misdemeanor shoplifting adjudications (§ 459.5) pursuant to section 1170.18, the resentencing provision of Proposition 47. In her petition, C.W. also asked the court to order that a DNA sample she provided in connection with her adjudications be expunged from the state's DNA databank. The court reduced C.W.'s felony adjudications to misdemeanors but declined to order expungement of her DNA from the state databank. On appeal, C.W. challenges the latter ruling, contending that section 1170.18 requires expungement, and that the court's order denying expungement deprives her of equal protection. We affirm.

[1] All undesignated statutory references are to the Penal Code.

I. BACKGROUND

In July 2010, the Contra Costa County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602) alleging C.W. committed five felony counts of second degree commercial burglary (§§ 459, 460, subd. (b)) at the Macy's store in Antioch.[2] In March 2011, after a contested jurisdictional hearing, the juvenile court sustained four of the five counts, dismissing one count as not true. In May 2011, the court adjudged C.W. a ward of the court, ordered her to spend one weekend in juvenile hall, and imposed other probation conditions, including a requirement that she provide a DNA sample for inclusion in the state's databank (see §§ 296, subd. (a)(1), 296.1).

C.W. appealed the dispositional order, initiating the first appeal in this matter (No. A132159). In a 2012 decision, we vacated the juvenile court's findings and dispositional order and remanded for further proceedings, including giving notice to C.W. of her eligibility for the deferred entry of judgment program (see Welf. & Inst. Code, § 790 et seq.). (*In re C.W.* (2012) 208 Cal.App.4th 654, 657, 662–663.) It appears that, as a result of subsequent juvenile court proceedings (which are not reflected in the appellate record), the felony adjudications were reinstated.

In July 2015, C.W. filed a petition in the juvenile court, asking that her four felony second degree commercial burglary adjudications be designated as misdemeanors pursuant to Proposition 47's resentencing provision, section 1170.18. In her petition, C.W. also requested that the court order the expungement of her DNA sample from the state databank upon designation of her adjudications as misdemeanors.

At a hearing on July 21, 2015, the court granted C.W.'s request to designate her adjudications as misdemeanors. The court denied C.W.'s request for expungement of her

[2] We derive this portion of the procedural background from the record of a prior appeal arising from this juvenile wardship proceeding (No. A132159). On our own motion, we take judicial notice of the record of that appeal. (See Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

DNA sample from the state databank.[3] The court, relying in part on *Coffey v. Superior Court* (2005) 129 Cal.App.4th 809 (*Coffey*), which it found "instructive," concluded the reduction of a felony adjudication to a misdemeanor pursuant to Proposition 47 does not require expungement of the offender's DNA sample. C.W. appealed.

II. DISCUSSION

A. Alleged Statutory Right to Expungement

C.W., relying on a recent decision by the Fourth District Court of Appeal, *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209 (*Alejandro*), contends her DNA sample should be expunged because her felony adjudications were converted to misdemeanors pursuant to section 1170.18. In response, the Attorney General argues that (1) the *Alejandro* court incorrectly concluded section 1170.18 requires expungement, and (2) a subsequent legislative enactment, Assembly Bill No. 1492 (2015–2016 Reg. Sess.) (Bill No. 1492) clarifies that resentencing under section 1170.18 does not provide a basis for expungement.

We review de novo questions of statutory or voter-initiative interpretation. (*People v. Park* (2013) 56 Cal.4th 782, 796 [rules of statutory interpretation apply to voter initiatives]; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1176.) Our task is to determine the intent of the drafters so as to effectuate the purpose of the law. (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 213.) To determine legislative intent, we first look to the words of the statute and give them their usual and ordinary meaning. (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) But we do not consider the language in isolation; instead, we construe it "in context, keeping in mind the statutes' nature and obvious purposes," and we "harmonize the various parts of the enactments by considering them in the context of the statutory framework as a whole." (*People v. Cole* (2006) 38 Cal.4th 964, 975.) "If the statutory language is unambiguous, then its plain meaning controls. If, however, the language supports more than one reasonable

[3] At the hearing, the parties stipulated that the briefing and oral argument in another case presenting the same legal issue (*People v. S.B.*, Super. Ct. Contra Costa County, 2015, No. J1301068) be incorporated into the record in this case.

construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history." (*Ibid.*)

Proposition 47, enacted by the voters in November 2014, reduced certain drug and theft offenses to misdemeanors unless the offenses were committed by otherwise ineligible defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089, 1091.) Section 1170.18, the resentencing provision added by Proposition 47, provides that a person who was found to have committed a felony, yet "who would have been guilty of a misdemeanor under [Proposition 47]" had it been in effect at the time of the offense, may request that the offense be designated a misdemeanor. (§ 1170.18, subds. (a), (f).) Neither section 1170.18 nor any other provision of Proposition 47 addresses whether the redesignation of a felony as a misdemeanor requires the expungement of DNA samples previously collected as a result of a felony conviction or adjudication. Section 1170.18 only states, in subdivision (k), that an offense designated a misdemeanor pursuant to the statute "shall be considered a misdemeanor for all purposes" except as to restrictions on the person's ability to own or possess a firearm.[4] (§ 1170.18, subd. (k).)

The DNA and Forensic Identification Database and Data Bank Act of 1998 (DNA Database Act), section 295 et seq., requires qualifying persons to submit DNA samples to the state's databank (§ 296, subd. (a)) and specifies procedures for expungement of those samples (§ 299). The DNA Database Act was amended in 2004 through passage of Proposition 69, the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, which "substantially expanded the range of persons who must submit DNA samples to the state's forensic identification data bank." (*Good v. Superior Court* (2008) 158 Cal.App.4th 1494, 1498.) Persons qualifying under the DNA Database Act for submission of DNA samples include: any person, including any juvenile, who is

[4] Section 1170.18, subdivision (k) states a felony conviction that is reclassified as a misdemeanor "shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6."

convicted of or who pleads guilty or nolo contendere to a felony offense; any juvenile who is adjudicated under section 602 of the Welfare and Institutions Code for committing a felony offense; and any person, including any juvenile, who is required to register under section 290 (sex offender registration) or section 457.1 (arson offender registration) because of the commission of, or the attempt to commit, a felony or misdemeanor offense. (§ 296, subd. (a).) The DNA submission requirements "shall apply to all qualifying persons regardless of sentence imposed . . . and regardless of disposition rendered or placement made in the case of a juvenile who is found to have committed any felony offense . . . ." (§ 296, subd. (b).)

Section 299 provides that a person whose DNA profile has been included in the state databank "shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the databank program . . . if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Databank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile." (§ 299, subd. (a).) Under subdivision (f) of this statute, *"[n]otwithstanding any other law*," a judge is prohibited from relieving a person of his or her administrative duty to submit DNA if the person has been found guilty or was adjudicated a ward of the court for a qualifying offense under section 296, subdivision (a), or pleaded no contest to a qualifying offense. (§ 299, subd. (f), italics added.)

When C.W. filed her petition for relief, subdivision (f) of section 299 set forth a non-exhaustive list of three statutes—sections 17, 1203.4 and 1203.4a—that do not authorize a judge to relieve a person of the duty to provide a DNA sample for a qualifying offense. (§ 299, former subd. (f), added by Prop. 69, § 4, as approved by voters, Gen. Elec. (Nov. 2, 2004).) Bill No. 1492, which was signed into law in October 2015, added section 1170.18 to that list. Accordingly, effective January 1, 2016, section 299, subdivision (f) states: "*Notwithstanding any other law, including Sections 17, 1170.18, 1203.4, and 1203.4a,* a judge is not authorized to relieve a person of the separate administrative duty to provide . . . samples . . . required by this chapter if a

person . . . was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296 . . . ." (§ 299, subd. (f), italics added.) Divisions One and Three of this District have held that section 299, subdivision (f) "was intended to prohibit trial courts, when reducing or dismissing charges pursuant to the listed statutes, from also expunging the DNA record given in connection with the original felony conviction." (*In re J.C.* (2016) 246 Cal.App.4th 1462, 1473–1474 (*J.C.*); accord, *In re C.B.* (2016) 2 Cal.App.5th 1112, 1123, review granted Nov. 9, 2016, S237801 (*C.B.*).)

Despite the language of section 299, subdivision (f), C.W. contends a court's redesignation of an offense under Proposition 47 *does* trigger a right to expungement of the offender's DNA records because section 1170.18, subdivision (k) states that, upon redesignation, an offense "shall be considered a misdemeanor for all purposes," except with regard to restrictions on ownership or possession of firearms. C.W. argues this provision requires expungement of her DNA samples because a juvenile is not required to submit such samples unless he or she is found to have committed a felony. The decision in *Alejandro* supports C.W.'s position, as the court there held that a felony redesignated a misdemeanor pursuant to Proposition 47 "*no longer qualifies as an offense permitting DNA collection*" and is therefore "outside the matters contemplated by the Penal Code DNA expungement statute." (*Alejandro*, *supra*, 238 Cal.App.4th at p. 1229.) The *Alejandro* court reasoned that, because section 1170.18 specifies only the firearm restriction as an exception to "the otherwise all-encompassing misdemeanor treatment of the offense," courts should not "carve out other exceptions" "absent some reasoned statutory or constitutional basis for doing so." (*Alejandro*, *supra*, 238 Cal.App.4th at p. 1227.)

As we shall explain, we reject C.W.'s argument, and we respectfully disagree with the holding in *Alejandro*. We instead agree with the holdings of our colleagues in Divisions One and Three that redesignation of a felony as a misdemeanor under section 1170.18 does not require expungement of an offender's DNA samples from the state databank. (See *In re C.H.* (2016) 2 Cal.App.5th 1139, 1151, review granted Nov. 16,

2016, S237762 (*C.H.*); *C.B., supra,* 2 Cal.App.5th at p. 1116, rev. granted; *J.C., supra,* 246 Cal.App.4th at pp. 1467–1468.)

First, as noted, neither section 1170.18 nor any other provision of Proposition 47 mentions DNA expungement. We are not authorized to add text to a statute's language. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 350.)

Second, the DNA Database Act does not support a conclusion that reclassification of an offense from a felony to a misdemeanor, without more, necessitates expungement of the offender's DNA records. We note C.W. is incorrect in suggesting that only a felony conviction triggers the obligation to submit DNA samples. The obligation applies to some categories of misdemeanants, including those required to register as sex or arson offenders. (§ 296, subd. (a)(3).) Moreover, the DNA Database Act authorizes expungement only for persons with "no past or present qualifying offense" whose cases fall into one of four categories: (1) after arrest, no accusatory pleading was filed, or a qualifying charge was dismissed prior to adjudication; (2) the qualifying conviction or disposition was reversed and the case was dismissed; (3) the individual was found factually innocent; or (4) the individual was found not guilty or acquitted of the qualifying offense. (§ 299, subd. (b)(1)–(4).) C.W., who was found to have committed four qualifying offenses (and whose felony adjudications apparently were reinstated after C.W.'s first appeal in this matter), does not fit into any of these categories.[5]

We also find persuasive the decision in *Coffey, supra,* 129 Cal.App.4th at page 823, in which the court held that a defendant who pled guilty to a "wobbler" offense as a felony was not entitled to expungement of his DNA sample after the court reduced the charge pursuant to section 17 and sentenced him to a misdemeanor.[6] Although section

[5] We do not hold section 299 provides the exclusive basis for expungement of DNA from the databank, which may be required on constitutional grounds in an appropriate case. (See *C.H., supra,* 2 Cal.App.5th at p. 1148, fn. 5, rev. granted, citing *Coffey, supra,* 129 Cal.App.4th at p. 817.)

[6] A "wobbler" offense is one that can be treated as a felony or a misdemeanor in the discretion of the sentencing court. (*Coffey, supra,* 129 Cal.App.4th at p. 812, fn. 2.)

17, subdivision (b) provides that an offense reduced to a misdemeanor under that statute is "a misdemeanor for all purposes," the *Coffey* court explained that language means the offense is a misdemeanor "for all purposes *thereafter*, without any retroactive effect." (*Coffey*, *supra*, 129 Cal.App.4th at pp. 818, 823.) Because Coffey was convicted of a felony when he pled guilty to the wobbler offense as a felony, he was subject to the DNA Database Act when his DNA samples were taken. (*Id.* at p. 823.) The samples thus were lawfully collected, and he had no constitutional right to have them returned. (*Ibid.*)

By analogy, the treatment of an offense redesignated under section 1170.18 as a misdemeanor "for all purposes" (§ 1170.18, subd. (k)) means the offense is treated as a felony up until the time of redesignation, and is only treated as a misdemeanor following the redesignation. (See *C.H.*, *supra*, 2 Cal.App.5th at pp. 1146–1147, rev. granted.) Section 299 authorizes expungement of an offender's DNA sample only "if the person has no past or present offense or pending charge which qualifies that person for inclusion." (§ 299, subd. (a).) "If a felony conviction redesignated as a misdemeanor pursuant to section 1170.18 is treated as a felony up until the time of redesignation, similar to a wobbler felony conviction under section 17, the defendant would continue to have a past qualifying conviction even after the redesignation. Under the terms of section 299, the defendant would not be entitled to expungement of his or her DNA record." (*J.C.*, *supra*, 246 Cal.App.4th at p. 1479; accord, *C.B.*, *supra*, 2 Cal.App.5th at pp. 1123–1124, rev. granted.)

The *Alejandro* court found *Coffey* distinguishable because the DNA expungement statute, section 299, subdivision (f), expressly provided a defendant whose sentence was reduced to a misdemeanor under section 17, subdivision (b) must provide DNA samples, while no statutory provision reflected a similar legislative or voter determination as to an offense redesignated a misdemeanor under Proposition 47. (*Alejandro*, *supra*, 238 Cal.App.4th at pp. 1229–1230.) We note that, even before its recent amendment, section 299, subdivision (f) stated that, "*[n]otwithstanding any other provision of law*," a judge cannot relieve a defendant of the administrative duty to provide DNA for inclusion in the state's DNA databank. (§ 299, former subd. (f), added by Prop. 69, § 4, as approved by

voters, Gen. Elec. (Nov. 2, 2004), italics added.) In light of this language, we decline to read the more general language in section 1170.18 that a reclassified offense is to be treated as a misdemeanor "for all purposes" as a grant of authority to disregard the restrictions imposed by section 299, subdivision (f).

In any event, to the extent there was uncertainty about the relationship between Proposition 47 and the DNA Database Act, the Legislature has resolved it with Bill No. 1492, which added section 1170.18 to section 299, subdivision (f)'s non-exclusive list of statutes that do not authorize a judge to relieve an otherwise qualified person from the administrative duty to submit DNA samples. (See *C.B., supra,* 2 Cal.App.5th at p. 1126, rev. granted.) This amendment clarifies that the redesignation procedure under section 1170.18 does not relieve a defendant of his or her DNA submission obligations.

C.W. argues section 299, subdivision (f) does not address expungement, since it only states a judge may not "relieve" a defendant of the "duty to provide" DNA samples. We disagree. As noted, section 299, subdivision (f) lists sections 17, 1170.18, 1203.4 and 1203.4a as examples of provisions that do not authorize a judge to relieve a person of the duty to provide DNA samples. Those listed statutes address situations in which a court *reduces* an originally qualifying offense to something less serious: sections 17 and 1170.18 provide for the reduction of a felony to a misdemeanor; sections 1203.4 and 1203.4a provide for dismissal of charges upon successful completion of probation or sentence. The inclusion of those statutes only makes sense if section 299, subdivision (f) is construed to preclude expungement when a court reduces an originally qualifying offense to a nonqualifying offense. (See *J.C., supra,* 246 Cal.App.4th at p. 1475.) Under a reasonable reading of section 299, if a court is not authorized to relieve a defendant of the duty to provide DNA, the court also is not authorized to order expungement of the defendant's DNA. (*C.B., supra,* 2 Cal.App.5th at p. 1127, rev. granted.)

We reject C.W.'s suggestion that the Legislature could only achieve this result by amending subdivision (e) of section 299, which expressly addresses expungement. "It is not our place to dictate to the Legislature the statutory structure" (*J.C., supra,* 246

Cal.App.4th at p. 1475, fn. 8), and, as we have discussed, the intent and meaning of section 299, subdivision (f) are clear from its language.

B. Equal Protection

In her opening appellate brief, C.W. contends briefly that the juvenile court's order denying expungement deprives her of equal protection. She argues that if Proposition 47 had been in effect at the time of her adjudication, she would not have had to submit a DNA sample. Accordingly, removal of her DNA from the state databank is necessary so she will be treated similarly to an offender who commits a crime after Proposition 47's enactment. We disagree.

" 'Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, "equal protection of the law is denied only where there is no 'rational relationship between the disparity of treatment and some legitimate governmental purpose.' " ' " (*C.H., supra,* 2 Cal.App.5th at p. 1151, rev. granted.) As the court explained in *C.H.*: "Preserving the integrity and vitality of the state's DNA database system provides a rational basis to retain the DNA and profiles of offenders who were convicted before enactment of Proposition 47, even if they would not be required to provide DNA if convicted after its effective date. It is reasonable to conclude that a more comprehensive database, with samples from more offenders, is a more effective and utilitarian database." (*Id.* at p. 1152.) We agree with this analysis and reject C.W.'s equal protection claim.

III. DISPOSITION

The juvenile court's order denying C.W.'s request for expungement of her DNA samples from the state databank is affirmed.

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Streeter, J.

We concur:

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Reardon, Acting P.J.

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Rivera, J.